

## CHAPTER 32: CONSTRUCTION LOAN POOLS — SPECIAL REQUIREMENTS

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### 32-1: OVERVIEW OF CHAPTER

This chapter describes special requirements that apply to a pool consisting of a single loan for the construction of multifamily housing.

The requirements stated in this chapter modify those set forth in previous chapters for applying for and maintaining issuer status, obtaining commitment authority and pool numbers, submitting pool issuance documents, delivering securities, and administering pools.

The pool suffix is “CL” or “CS.”

The construction loan pool designations have the following meanings:

“CL” identifies a pool consisting of a single construction loan; the interest rate payable on the securities backed by a CL pool will also be the interest rate payable, upon conversion of the construction loan securities, on the resulting project loan securities.

“CS” identifies a pool consisting of a single construction loan; the interest rate payable on the securities backed by a CS pool will differ from the interest rate payable, upon conversion of the construction loan securities, on the resulting project loan securities.

Construction loan pools can be formed only under the Ginnie Mae I MBS Program.

### 32-2: ISSUER ELIGIBILITY

To be eligible to issue construction loan securities, an applicant must satisfy the eligibility requirements set forth in Chapters 2 and 3, including the net worth requirements applicable to issuers of construction loan securities. (See Sections 2-9 and 3-8)

### 32-3: ISSUER’S RISKS AND LIABILITIES

In addition to the risks and liabilities described in Chapter 5, a construction loan pool issuer incurs the following liability: if the securities mature, the issuer must retire the securities at par, in cash, using its own funds. (See Sections 32-10(I) and (J))

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### **32-4: SERVICING FEES AND GUARANTY FEES**

These fees are the same as those for project loan securities.  
(See Section 31-3)

### **32-5: COMMITMENT AUTHORITY TO GUARANTEE SECURITIES**

To participate in the program, issuers must request commitment authority and pool numbers as described in Chapter 8. All multiline commitment authority will expire the last day of the month that is 24 months from the date of approval of the commitment authority. Multiline commitment authority cannot be converted to single-line commitment authority.

#### ***(A) Application***

The procedure for applying for multiline commitment authority or pool numbers is described in Section 8-3, and the documents that must be submitted to the Office of Multifamily Programs (see Addresses) are described in Section 8-4.

#### ***(B) Commitment***

The commitment fee is described in Section 6-2(B).

#### ***(C) Pool Numbers***

Consecutive pool numbers must be reserved for an issue of construction loan securities and the related project loan securities. The lower pool number is to be used for the construction loan securities.

### **32-6: MORTGAGE ELIGIBILITY AND POOL REQUIREMENTS**

A construction loan pool consists of one mortgage representing a single construction loan. The mortgage must satisfy the following requirements:

#### ***(A) FHA Insurance***

The mortgage must be insured by FHA under the National Housing Act and the appropriate implementing regulations and must be eligible for pooling under both the construction loan and the project loan MBS programs.

#### ***(B) Minimum Mortgage Amount***

The mortgage amount, after all advances, must total at least \$250,000.

#### ***(C) Initial Endorsement***

The mortgage note must have been initially endorsed by FHA for insurance of advances.

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### **32-7: ADVANCES OF LOAN FUNDS PRIOR TO POOL SUBMISSION**

Prior to each issuance of securities, the issuer takes the following steps with respect to FHA-insured advances:

- (A) makes a request to FHA for the insurance of advances;
- (B) makes timely disbursement to all payees named in form HUD 92403; and
- (C) submits documents to the document custodian for its certification and to PPA for the issuance of securities, as described in Sections 32-8(B) and 32-9(B), respectively.

### **32-8: REQUIRED DOCUMENTS FOR CERTIFICATION BY DOCUMENT CUSTODIAN**

After initial endorsement by FHA, the documents listed below must be delivered to the document custodian, which certifies to their receipt on the back of the Schedule of Pooled Mortgages, form HUD 11706 (Appendix III-7).

#### **(A) *Basic Pool Documents***

Prior to issuance of the initial securities backed by a pool, the following documents shall be delivered to, and certified by, the document custodian:

- (1) The original of the note or other evidence of indebtedness endorsed for insurance by FHA and endorsed or assigned in blank by the issuer.
- (2) A duly executed and valid assignment of the security instrument to Ginnie Mae, which is in recordable form but unrecorded.
- (3) An executed original Release of Security Instrument, form HUD 11711A (Appendix III-5) relating to the pooled mortgage, if applicable.
- (4) An executed original Certification and Agreement, form HUD 11711B (Appendix III-5) signed by an officer of the issuer.

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### *Section 32-8(A) (continued)*

- (5) The original of the recorded mortgage or other security instrument securing payment of the indebtedness.

A title insurance company-certified copy may be used to certify the pool, but when the issuer receives the recorder-certified copy, the issuer must submit it to the document custodian.

- (6) A duplicate original standard title insurance policy containing such provisions as are acceptable to FHA.
- (7) A duplicate original of the performance bond (dual obligee) naming Ginnie Mae, either on the policy or by assignment or endorsement, as an insured party, or an assurance of completion agreement as approved by FHA. If a letter of credit is collected as collateral for the assurance of completion agreement, an assignment of the letter of credit shall be deposited. Any assignment must evidence the surety's written consent.
- (8) Copies of Uniform Commercial Code forms or other security documents pertaining to personalty evidencing recordation with the appropriate office and an original assignment of such security documents to Ginnie Mae in recordable form but unrecorded. Issuers must keep UCC filings current while a loan is in the pool.
- (9) Copies of survey and surveyor's report.
- (10) An original of the Building Loan Agreement.
- (11) A copy of the Construction Contract.
- (12) Such other documents as Ginnie Mae may require.

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### *Section 32-8 (continued)*

#### ***(B) Documents Supporting Separate Issuances***

Prior to each individual issuance of securities, including the first, the issuer must place in the possession of, and have certified by, the document custodian, the following additional documents:

- (1) A certificate showing that the disbursement has been made to the mortgagor and payee named in form HUD 92403. Other documents must be made available upon request.
- (2) A copy of the application for insurance of advances (form HUD 92403) approved by the HUD field office. This provides evidence of FHA insurance inclusive of the latest disbursement.
- (3) Evidence that title insurance coverage, inclusive of the amount of the advance, is in effect.

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### **Section 32-8(B) (continued)**

The loan documents required for certification are summarized below:

DOCUMENT	FORM NUMBER	APPENDIX
<b>TO DOCUMENT CUSTODIAN PRIOR TO INITIAL ISSUANCE</b>		
Schedule of Pooled Mortgages	HUD 11706	III-7
Release of Security Interest, if applicable	HUD 11711A	III-5
Certification and Agreement	HUD 11711B	III-5
Original note, endorsed for FHA insurance and endorsed in blank, without recourse		
Original recorded mortgage or other security instrument of indebtedness		
Assignment of mortgage or security instrument to Ginnie Mae, in recordable form but not recorded		
Duplicate original title insurance policy		
Completion Assurance Agreement / Performance Bond		
Copies of UCC forms or other security documents for personalty		
UCC assignment to Ginnie Mae, in recordable form but not recorded		
Copy of survey and surveyor's report		
Original Building Loan Agreement		
Copy of construction contract		
Any other document required by Ginnie Mae		
<b>TO DOCUMENT CUSTODIAN PRIOR TO EACH SUBSEQUENT ISSUANCE</b>		
Application for insurance of advances	FHA 92403	
Certificate of disbursement		
Evidence of title insurance		

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### **32-9: REQUIRED DOCUMENTS FOR APPROVAL BY PPA AND GINNIE MAE**

Once the mortgage proceeds have been advanced and insured and all necessary documents have been delivered to and certified by the document custodian, the issuer is ready to issue the Ginnie Mae securities.

#### ***(A) Initial Issuance***

For the initial issuance, in addition to the documents required by Section 10-3, the issuer must deliver to the PPA all the following documents not later than 3 business days prior to the anticipated delivery date of the securities.

- (1) A copy of the mortgage note or other form of indebtedness, evidencing the FHA insurance endorsement.
- (2) Schedule of Subscribers and Ginnie Mae Guaranty Agreement, form HUD 11705 (Appendix III-6).
- (3) Schedule of Project Mortgages, form HUD 11706 (Appendix III-7).
- (4) Prospectus, form HUD 1731 (Appendix IV-10). This prospectus serves also as the prospectus for the project loan securities that are issued upon the conversion of the construction loan securities.
- (5) Custodian's Certification for Construction Securities, form HUD 11732 (Appendix III-22). This document, which must be signed by the document custodian before it is submitted to Ginnie Mae by the issuer, evidences that the document custodian is holding: (a) a certification that disbursement has been made to the mortgagor, (b) evidence of FHA insurance inclusive of the disbursement, and (c) evidence of title insurance coverage inclusive of the latest disbursement.
- (6) A copy of form HUD 92403, evidencing insurance of the advances.
- (7) If the FHA assignment fee is to be waived by FHA, a written certification by the issuer to the effect that the assignment fee is not applicable.

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### **Section 32-9(A)** **(continued)**

- (8) For the issuance of a project loan security that is a conversion from a construction loan security, the issuer must deliver to the PPA the documents listed in Section 31-12.

### **(B) Subsequent Issuances**

For subsequent issuances within a pool, the issuer must deliver to the PPA, not later than 3 business days prior to the anticipated delivery date, the following documents:

- (1) Schedule of Subscribers and Ginnie Mae Guaranty Agreement, form HUD 11705 (Appendix III-6);
- (2) Custodian's Certification for Construction Securities, form HUD 11732 (Appendix III-22); and
- (3) FHA Form 92403, as described above.

The following table lists the pool documents to be sent to the PPA for approval of a construction loan pool:

DOCUMENT NAME	FORM NUMBER	APPENDIX
<b>TO PPA PRIOR TO INITIAL ISSUANCE</b>		
Copy of note or other form of indebtedness	--	--
Schedule of Subscribers and Ginnie Mae Guaranty Agreement	HUD 11705	III-6
Schedule of Pooled Mortgages	HUD 11706	III-7
Master Servicing Agreement	HUD 11707	III-1
Master Agreement for Servicer's Principal and Interest Custodial Account	HUD 11709	III-2
Master Agreement for Servicer's Escrow Custodial Account	HUD 11720	III-3
Master Custodial Agreement	HUD 11715	III-4
Prospectus	HUD 1731	IV-10
Custodian's Certification for Construction Securities	HUD 11732	III-22
Copy of Application for insurance of advances	FHA 92403	--
Any other documents required by Ginnie Mae		



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### *Section 32-9(B) (continued)*

TO PPA PRIOR TO EACH SUBSEQUENT ISSUANCE		
Schedule of Subscribers and Ginnie Mae Guaranty Agreement	HUD 11705	III-6
Custodian's Certification for Construction Securities	HUD 11732	III-22
Application for insurance of advances	HUD 92403	--

### **32-10: SECURITIES**

Preparation and delivery of securities through the depository are described in Chapter 12. This section presents additional information about securities backed by construction loan pools.

#### ***(A) Interest Payments***

Each issuance of construction loan securities is dated the first day of the month of issue. The securities provide that accrued interest for 30 days is payable by the issuer to the security holders, commencing 45 days after the issue date and continuing on the 15th of each successive month or, if payment is made by electronic transfer and the 15th day of the month is not a business day, then on the first business day following the 15th day of the month. Construction loan securities provide for the payment of interest, at the rate provided for in the securities, whether or not collected by the issuer.

#### ***(B) Interest Rate***

Without Ginnie Mae's written approval of a different rate, the interest rate on construction loan securities must be at least 25 basis points but not more than 50 basis points below the interest rate on the related construction loan.

#### ***(C) No Scheduled Principal***

Construction loan security holders are not entitled to scheduled payments of principal. Principal payments cannot be applied and passed through to construction loan security holders. Funds from principal payments due under the mortgage prior to issuance of the related project loan securities must be deposited and held in the appropriate P&I custodial account until issuance of the related project loan securities.

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### ***Section 32-10 (continued)***

#### ***(D) Insurance of Advances***

Construction loan securities generally are issued monthly as construction progresses and as advances are insured by FHA. Mortgage funds must be insured by FHA and advanced by the issuer prior to the submission of the pool documents to the PPA.

#### ***(E) Minimum Security Amount***

Each issuance of construction loan securities must be in the amount of at least \$25,000 and will be made less frequently than monthly to the extent that insured loan advances are less than \$25,000 a month. Several draws may be combined to support an issuance of more than \$25,000 in a month.

#### ***(F) Outstanding Principal Amount***

The outstanding principal amount of securities for a pool may not exceed the amount of advances that has been disbursed and insured on the construction loan in the pool. The amount of securities to be issued in connection with a project may be increased at such time as the amount of the mortgage is increased because of increased construction costs or other reasons. The issuer is responsible for marketing the additional securities. If the mortgage increase is at a different interest rate than the rate on the original loan, a new securities pool will be established to fund the increase.

#### ***(G) Conversion of Securities at Maturity***

Construction loan securities are redeemed by the issuance of project loan securities to the construction loan security holders. Project loan securities are issued in the month following the final endorsement for insurance of the pooled mortgage. Instructions for assembling and submitting pool issuance documents for the project loan securities are set forth in Sections 31-11 and 12.

- (1) Purchasers of construction loan securities agree to accept this redemption through the issuance of project loan securities.
- (2) Construction loan securities that are held in certificated form must be surrendered to Ginnie Mae prior to issuance of the project loan securities.

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### **Section 32-10(G)** **(continued)**

- (3) The outstanding construction loan securities may be delivered by the security holder to the issuer for surrender or the security holder may deliver them directly to the CPTA (see Addresses). The outstanding construction loan securities must be surrendered before the project loan securities will be released.
- (4) For book-entry securities, issuers are required to notify the registered security holder, which is the depository's nominee, in writing that the construction loan securities are to be converted to a project loan security. This notification must be sent to the nominee's street address (see Addresses), not a box number (since many box numbers are used only for cash collection).

### **(H) Maturity of Securities**

The maturity date of the construction loan securities that is stated in the prospectus will not be less than 200 percent of the length of the construction period anticipated by FHA. The maturity date of securities already issued may be increased with the prior written approval of Ginnie Mae, based on a written request from the issuer and a written acceptance of the extension by all security holders of the outstanding securities. For book-entry securities, the registered security holder is the depository's nominee.

### **(I) Prepayment**

If the amount of the insured loan at final endorsement by FHA is less than the amount of outstanding construction loan securities upon completion of the project, the construction loan securities must be prepaid in the amount of the difference at the time of conversion to project loan securities. This can occur, for example, if there is a reduction of the loan amount resulting from the cost certification process.

### **(J) Retirement of Securities**

If the pooled mortgage is liquidated or project loan securities cannot be issued by the maturity date of the construction loan securities, and the maturity date of the securities is not extended with Ginnie Mae's written approval, then the construction loan securities must be retired by the issuer by the payment of cash to the security holders. The security holders must surrender the securities to the issuer, which in turn must surrender them to the CPTA.

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**32-11: THE PROSPECTUS** The prospectus for the construction loan securities is form HUD 1731 (Appendix IV-10). This prospectus serves also as the prospectus for the project loan securities that are issued upon conversion of the construction loan securities.

If the project loan securities are to be backed by a mortgage with non-level payments, the construction loan prospectus must disclose that fact in the “Annex — Special Disclosure” and must indicate that project loan securities issued to redeem the construction loan securities will be of the PN or, if applicable, LS variety. (See Chapters 31-7 and 31-9)

**32-12: LOAN DEFAULT  
AND CLAIMS  
PROCEDURES** The issuer must follow the procedures, as applicable, set forth in Section 31-14(D).

If the issuer files a claim for FHA insurance and the settlement of the claim is made in FHA debentures, Ginnie Mae will purchase the debentures from the issuer for cash at a price of par.